# Frequently Asked Questions Regarding STOP Formula Grant Program Forensic Exam Payment Requirement

#### 1. What is required?

Under 42 U.S.C. § 3796gg-4, a state is not entitled to funds under the STOP Formula Grant Program unless the State or another governmental entity "incurs the full out-of-pocket cost of forensic medical exams . . . for victims of sexual assault."

#### 2. What is a "forensic medical exam?"

The term "forensic medical exam" means an examination provided to a sexual assault victim by medical personnel trained to gather evidence of a sexual assault in a manner suitable for use in a court of law.

The examination should include at a minimum:

- 1) examination of physical trauma;
- 2) determination of penetration or force;
- 3) patient interview; and
- 4) collection and evaluation of evidence.

The inclusion of additional procedures (e.g., testing for sexually transmitted diseases) to obtain evidence or provide treatment may be determined by the state in accordance with its current laws, policies, and practices.

### 3. What does a state have to do to "incur the full out-of-pocket cost" of these exams?

A state shall be deemed to incur the full out-of-pocket cost of forensic medical exams for victims of sexual assault if any government entity-

- 1) provides such exams to victims free of charge to the victim;
- 2) arranges for victims to obtain such exams free of charge to the victims; or
- 3) reimburses victims for the cost of such exams if-
- A) the reimbursement covers the full cost of such exams, without any deductible requirement or limit on the amount of a reimbursement;

- B) the reimbursing governmental entity permits victims to apply for reimbursement for not less than one year from the date of the exam;
- C) the reimbursing governmental entity provides reimbursement not later than 90 days after written notification of the victim's expense; and
- D) the State or reimbursing governmental entity provides information at the time of the exam to all victims, including victims with limited or no English proficiency, regarding how to obtain reimbursement.

## 4. What is the required timing for reimbursement if the state pays the hospital directly, rather than the victim?

If the state or other governmental entity is paying the hospital or other medical provider directly, there is no time limit for reimbursement. The above time limits only apply where the governmental entity is providing the reimbursement to the victim.

### 5. What is the definition of "full out-of-pocket costs?"

"Full out-of-pocket costs" means any expense that may be charged to a victim in connection with a forensic medical examination for the purpose of gathering evidence of a sexual assault (e.g., the full cost of the examination, an insurance deductible, or a fee established by the facility conducting the examination). For individuals covered by insurance, "full out-of-pocket costs" means any costs that the insurer does not pay.

#### 6. Can STOP funds be used to fund SANE/SAFE programs?

SANE (Sexual Assault Nurse Examiner) or SAFE (Sexual Assault Forensic Examiner) programs may be supported through the STOP Program. However, because states, territories, and Indian tribal governments must certify that they will incur the full out-of-pocket expenses for forensic medical examinations, there are specific activities of SANE/SAFE exams that may not be supported with STOP funds. Those activities that fit within the above definition of "forensic medical exam" may not be paid with grant funds.

#### 7. What aspects of SANE/SAFE programs can STOP funds pay for?

STOP grant funds may support the following activities related to SANE/SAFE programs:

- o training for SANE/SAFE personnel
- o expert testimony of SANE/SAFE personnel
- o forensic evidence collection kits ("rape kits")
- o equipment, such as colposcopes, swab dryers, and lights

- o development of protocols and policies to operate a SANE/SAFE program
- o efforts to raise public awareness of available services
- victim advocate personnel to accompany victims through the forensic examination process
- o on-going counseling services for victims
- o on-call time of the SANE/SAFE personnel

This list of SANE/SAFE activities that may be funded is not comprehensive and other similar activities may be funded.

#### 8. What if the hospital charges a fee for the use of the examining room?

If the hospital or other medical facility charges a fee for the use of the examining room, that is part of the exam that must be paid by the state or other governmental entity.

## 9. Can the state require victims to submit the claims for the cost of the exam to their personal health insurance providers?

Under the above definition of "full out-of-pocket costs," states can require that victims submit claims to their personal insurers. However, any expenses not covered by the insurer must be covered by the state or other governmental entity. This includes any deductibles or denial of claims by the insurer. We urge states to keep in mind that, in some cases, insurance billing can present a hardship for victims. For example, a victim of spousal rape may not want her husband to find out that she got a forensic exam. If the victim is forced to submit the claim to her insurance company and she is on her husband's insurance, he may receive a statement from the insurance indicating that she got the exam. For this reason, the Office on Violence Against Women strongly encourages states to not require victims to file a claim with their insurers.

# 10. Are states permitted to require victims to cooperate with law enforcement in order to have the exam paid for?

A state is in compliance with this provision even if the victim is required to cooperate with law enforcement in order to receive payment for the exam. However, the Office on Violence Against Women strongly encourages states to pay for forensic exams without requiring victims to cooperate with law enforcement. Some victims are unable to make a decision about whether they want to cooperate with law enforcement in the immediate aftermath of the assault. Recognizing that evidence is lost as time progresses, the victim should be encouraged to have the evidence collected right away and have time to decide about reporting the crime at a later date.

#### 11. Can a state set a limit on the cost of the exam?

The state may not set a limit on reimbursement to victims relating to these exams. If the state is providing the exams free of charge to victims, then the state may set a rate for the cost of an exam. However, states should be cautious that they do not set the rate so low that no facilities are willing to provide exams.

### 12. Can a state use its Crime Victims Compensation Fund to pay for the forensic exams?

Yes, if state law designates the victim compensation program as the primary paying source for the exams. In approximately 15 states, the compensation program is the primary payer under state law. In the other states, compensation programs may pay for the exams, but generally a different primary payment source has this responsibility.

For Federal guidelines that apply to the Victims of Crime Act Victim Compensation Grant Program, go to: <a href="http://www.ojp.usdoj.gov/ovc/welcovc/scad/guides/voca.pdf">http://www.ojp.usdoj.gov/ovc/welcovc/scad/guides/voca.pdf</a>.

If you have further questions about the use of crime victim compensation funding for forensic exam payment, please contact the Office for Victims of Crime at 202-307-5983.